UNITED NATIONS

HRI

International Human Rights Instruments

Distr.
GENERAL

HRI/CORE/1/Add.67
11 March 1996

Original: ENGLISH

CORE DOCUMENT FORMING PART OF THE REPORTS OF STATES PARTIES

NETHERLANDS: THE NETHERLANDS ANTILLES

[12 December 1995]

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1. Third population and housing census, Netherlands Antilles 1992, vols. 1, 2 and 3

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* Available for consultation in the files of the Centre for Human Rights.

I. LAND AND PEOPLE

A. General

1. The Netherlands Antilles is an autonomous part of the Kingdom of the Netherlands and consists of five islands: Bonaire with its capital Kralendijk, Curaçao with its capital Willemstad, Saba with its capital The Bottom, St. Eustatius with its capital Oranjestad and St. Martin with its capital Philipsburg. These are part of a chain of islands between North and South America known as the Antilles.

2. The combined surface area of the Netherlands Antilles is about 800 km^2, of which Bonaire accounts for 288 km^2, Curaçao 444 km^2, Saba 13 km^2, St. Eustatius 21 km^2 and St. Martin 34 km^2. Based on their location, a distinction is made between the "Leeward Islands" of Bonaire and Curaçao and the "Windward (Dutch) Islands" (somewhat confusingly named, as they are part of the Leeward group of the Lesser Antilles) of Saba, St. Eustatius and St. Martin. This distinction dates from the time of the transatlantic sailing ships and refers to the islands' positions in relation to the trade wind.

3. The distance between the two groups of islands is about 900 kilometres. The Leeward Islands lie at a latitude of about 12° N and a longitude of about 68° to 70° W. They are coastal islands situated between 30 and 90 kilometres off the South American continent. Elongated in shape, these islands consist mainly of igneous rock surrounded by, and partly covered in, limestone. The highest point, at 375 m, is the peak of St. Christoffelberg on Curaçao. The Windward Islands, in the northern part of the Lesser Antilles, lie at about 18° N, 63° W. The islands are relatively close together: St. Martin and Saba are 52 km apart, and St. Eustatius and St. Martin 70 km apart. At 870.4 m, Mountain Scenery is the highest point in the Netherlands Antilles.

4. Precipitation on the Windward Islands is generally greater than on the Leeward Islands, and as a result the conditions for agriculture are slightly more favourable. Both island groups lie in the area where the trade wind blows from the north-east or south-east almost all year round. The average temperature is 27.1° C in the Leeward Islands and 25.4° C in the Windward Islands. The latter lie in the Atlantic hurricane zone, and on average a tropical storm or hurricane passes within 200 km of the islands once a year.

B. History

5. The Leeward Islands were originally inhabited by the Arawacs and the Windward Islands by the Caribs. The Windward Islands were "discovered" in 1493. In 1499 the Leeward Islands were "discovered" by the Spaniard Alonso de Ojeda.

6. Saba and St. Eustatius were taken over by the Dutch in 1632, the Leeward Islands in 1634 and the southern part of St. Martin in 1648.

7. The first Constitution of the Netherlands Antilles was enacted by the Dutch Parliament in 1865. It has since been revised several times. The most important revision was that in 1954, which resulted in the

establishment of the "*Statuut*", the Kingdom's Charter, the principal statutory instrument within the Kingdom of the Netherlands, which regulates internal self-government for the islands of the Netherlands Antilles.

8. The electoral system provides adequate safeguards for the right to self-determination for the Netherlands Antilles. This right was also explicitly recognized in top-level consultations between the Netherlands Antilles (including Aruba at that time), the separate island territories and the Netherlands held in The Hague in October 1981. None of the countries or islands taking part in the conference opposed the exercise of the right to self-determination. Thus agreement was reached on the right of the island populations to determine their own political future independently.

9. At a subsequent Round Table Conference between the Netherlands Antilles, the separate island territories and the Netherlands held in The Hague from 7 to 12 March 1983, it was established that Aruba would exercise its right to self-determination.

10. After lengthy negotiations between politicians of the different island territories of the Netherlands Antilles, in which several models for the future constitutional relations between the islands were discussed, Curaçao subsequently decided to hold a plebiscite on 19 November 1993, under United Nations supervision.

11. In order for the plebiscite to be a meaningful expression, and to comply with international standards, the people of the five islands had four options to choose from:

(a) Remaining part of the Netherlands Antilles;

(b) Becoming an autonomous country within the Kingdom of the Netherlands;

(c) Becoming a part of the Netherlands; and

(d) Becoming an independent State.

12. The results of the referendum, in which 56.8 per cent of the registered voters participated, showed that out of a total of 67,413 votes cast, 48,857 (73.6 per cent) were in favour of maintaining the existing status of Curaçao within the Netherlands Antilles.

13. As a result of the same circumstances and discussions regarding the constitutional future of the other island territories (Bonaire, Saba, St. Eustatius and St. Martin) it was also decided to hold plebiscites on these islands, based on their respective rights of self-determination. These plebiscites were organized along exactly the same lines as the referendum held in Curaçao. On all the islands, a vast majority (approximately 90 per cent) of the voters were in favour of maintaining the existing status of the island territories within the Netherlands Antilles.

14. These results provide a strong political basis for the continuation of the present constitutional structure between the islands of the Netherlands Antilles, although some modifications will be needed to secure the further development of the relations between the individual islands.

C. Social and economic infrastructure

1. Language

15. Papiamento is the native language and is common on the Leeward Islands. The name Papiamento is derived from the verb "papia" (talk) which probably comes from the old Portuguese "papear". Papiamento is a creole language with elements of African languages as well as Portuguese, Spanish, English and Dutch.

16. On the Windward Islands the lingua franca is English, which is also a very important language on Bonaire and Curaçao because of its use in trade, shipping and aviation, tourism and the media (e.g. English-language television series and sports). The official language is Dutch, although on various formal occasions the native language is being used more and more frequently.

2. Population

17. The Netherlands Antilles is an autonomous part of the Kingdom of the Netherlands with a population representing more than 40 nationalities of diverse ethnic origins. Population figures in the Netherlands Antilles are available from two different sources. The day-to-day registration of births, deaths, arrivals and departures takes place at the island registry offices; these figures relate only to the legal population. Another source of population figures are the censuses which were held in 1972, 1981 and 1992.

18. The results of censuses revealed discrepancies when compared with the records of the island registries. Fewer people proved to be resident in the Netherlands Antilles than appeared from the registry office records. The main cause of the high population totals in the registry offices is assumed to be the failure to register correctly the number of people leaving the various islands.

19. The Central Bureau of Statistics assumes that the census figures give the best approximation of the population of the Netherlands Antilles. At the time of the 1992 census, the country's total population was 189,472, comprising 98,766 women and 90,706 men.

20. Between 31 December 1986 and 31 December 1991 the population decreased considerably, by 42,781. This was largely due to the fact that Aruba acquired its semi-autonomous status (*status aparte*) on 1 January 1986, and its population was therefore separated from that of the Netherlands Antilles. Another cause for the decrease was emigration.

21. For further statistical information on population figures, please consult the volumes of the 1992 Population and Housing Census and the 1994 Statistical Yearbook (the Yearbook will be updated every year). These publications may be consulted at the United Nations Centre for Human Rights, Geneva.

3. Types of family

22. The abolition of slavery was followed by a period in which the slaves' descendants were still not encouraged to form monogamous family relationships. It was to be a considerable time before the "coloured population" opted for this type of family. The result was that there were both fathers with several families and mothers with children by several fathers in single-parent households. Both types of family are still common today.

23. There are also more single-parent households as a result of an increase in the number of divorces, teenage pregnancies and unmarried mothers in general.

4. Health

24. Responsibility for health care is divided between the Government (central and island authorities) and the private sector. Central Government is responsible for basic legislation on health and for ensuring that these provisions are observed. It is also responsible for implementing certain aspects of health care, including laboratories, psychiatric institutions, pharmacies, the prison medical service, industrial health services for civil servants and medical treatment for their families.

25. The Government is also in charge of the management of the Social Insurance Bank, which is responsible for the health care of workers in the private sector earning a wage below a certain level of income.

26. The island Governments, on the other hand, are mainly responsible for the implementation of health policy. They either provide the facilities themselves or use existing ones. This level of government also provides for curative health care for certain sections of the population, such as the lowest income groups and public servants earning a wage below a certain salary scale.

27. The island communities pay 100 per cent of the medical expenses of the poorest members of society. This includes, for example, the fees charged by general practitioners, specialists and hospitals, and the cost of medication. All other persons, whether civil servants or employees in the private sector, are entitled to use the health service and also to receive a contribution towards health care for their families. Many health-care institutions are run by the private sector and are subsidized, either by the central Government or by the authorities of one of the island territories.

28. Health care is defined by the World Health Organization (WHO) as a system of regulations and services created in order to promote health and to prevent and cure diseases. The development of a health-care system is related to the socio-economic situation of a country.

29. Health statistics should focus on three main aspects: the population's state of health; health-care provisions (supply of material and financial means, and human resources); the health-care services: supply and demand. This goes beyond what is presented in the data of the Statistical Yearbook,

which is annexed to this report*. The information on health statistics brings together different elements so as to give an overview of certain areas of health care. The health statistics provided will be concerned with: the state of health of the population; health-care provisions (supply); preventive aspects of health care, in relation to birth control. Most of the data concern the supply of provisions to recipients, because there are scarcely any data available that relate to the demand for health care.

5. Education

30. The first paragraph of article 140 of the Constitution of the Netherlands Antilles states that: "Education shall be the constant concern of the Government". Strictly speaking, it does not recognize an individual's directly applicable right to education. However, article 2 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is in force for the Netherlands Antilles, states that: "No person shall be denied the right to education". The European Court of Human Rights has interpreted this to mean that everybody has the right to attend existing schools, and that everybody has the right to enjoy the fruits of education, that is to say the right to recognition of the results attained as a result of it.

31. In the Netherlands Antilles there is equal access to all school types and equal opportunity in respect of educational facilities. According to the policy document issued by the Netherlands Antilles Ministry of Education, education policy must be structurally anchored in a national development policy aimed at the integrated development of Antillean society. The point of departure is thus that developments taking place in the broad context of national development policy must be supported by education. Among the groups requiring particular attention or policy guidelines at the moment are women, unemployed persons, young people and the disabled. For further relevant statistical data, please consult the Statistical Yearbook.

6. Housing

32. The Government endeavours to provide suitable housing for everyone. To this end, foundations (*Fundashon Kas Popular*) have been set up on the islands. The *Fundashon Kas Popular* in Curaçao, for instance, works in collaboration with the Departments of Public Works, Physical Planning and Housing to alleviate the shortage of adequate housing. Their activities include not only the implementation of conventional public sector housing projects and their management or development, but also the provision of assistance to people building their own homes. It should be pointed out that the financial burden on these builders is considerably less than the market price if assistance is received from the foundations. The latter also provide a limited amount of money in rent subsidies on the basis of income.

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7. Religion

33. The two island groups differ in point of religion. The population of the Leeward Islands is mainly Roman Catholic, whereas a significant part of the population of the Windward Islands is Methodist or Anglican. This is because of the historical dominance of British influence in the Windward Islands. For figures on other religions in the Netherlands Antilles, please consult the Statistical Yearbook.

8. Labour

34. Economic and employment affairs are primarily the responsibility of the Island governments. They are best placed to effectively target economic and employment policies and strategies to suit the specific features of their own labour markets and economic structure. Central Government plays a supportive role in this regard, defining the broad outline of policies and preparing the necessary legislation at central level.

35. The Government of the Netherlands Antilles promotes employment opportunities through a variety of measures. It is the task of the Central Employment Office:

(a) To promote compliance with the statutory regulations on employment mediation;

(b) To mediate between employers and job-seekers who are resident on different islands, and between employers in the Netherlands Antilles and job-seekers in other countries, or vice versa;

(c) To collect and publish data on the state of the labour market in the Netherlands Antilles.

The Government also endeavours to create employment by granting tax concessions to eligible businesses.

36. With regard to pension rights, men and women contribute equally to their pension funds and have the same retirement age.

37. Appointments and dismissals in the private sector are regulated by law, in the Civil Code of the Netherlands Antilles and the Country Ordinance on Terminating Contracts of Employment respectively. In accordance with the terms of the latter Ordinance, a committee advises the Director of the Department of Labour and Social Affairs on all requests submitted for the termination of a contract of employment. Furthermore, the Civil Code of the Netherlands Antilles regulates all other rules governing dismissal.

38. The employment scheme for civil servants is regulated by the Country Ordinance on Civil Service Regulations.

39. The following observations may be made regarding unemployment.

40. Although the unemployment rate has been declining over the past few years, it still remains high. Unemployment in general, and youth unemployment in particular, require constant attention on the part of the Government. The

Central Government has embarked on a policy of promoting flexibility on the labour market, and legislation has been enacted to promote employment among young job-seekers.

41. When the unemployment rate is being considered, the definition of the term "unemployed" is of great relevance. Up until 1988, all persons who answered the question "are you looking for work?" in the affirmative were deemed to be unemployed. In 1988 the definition was adjusted in accordance with that used by the International Labour Organization. In this new definition, "unemployment" has to fulfil two, more narrowly formulated, criteria: an unemployed person is someone who is not just looking for work but is:

(a) "Actively seeking work"; i.e. took specific steps in the month before the survey to seek paid employment or to establish himself as self-employed;

(b) "Available to start work within two weeks".

As a consequence of this change of definition, the unemployment figures for 1988 and subsequent years are not entirely comparable to those of the year before.

42. The following tables provide information on the labour force, including unemployed job-seekers as well as persons who are in employment.

LABOUR FORCE				
BONAIRE	1960	1972	1981	1992
Employed (1)	1 007	2 030	3 031	4 430
Unemployed (2)	396	430	395	402
Labour force (1 + 2)	1 403	2 460	3 426	4 832
Total population	5 812	8 249	8 753	10 187
Participation rate	24.1	29.8	39.1	47.4
Unemployment percentage	28.2	17.5	11.5	8.3
CURAÇAO	1960	1972	1981	1992
Employed (1)	34 429	41 935	47 290	51 640
Unemployed (2)	5 046	6 716	12 006	10 530
Labour force (1 + 2)	39 475	48 651	59 296	62 170
Total population	125 181	146 884	147 388	144 090
Participation rate	31.5	33.1	40	43
Unemployment percentage	12.8	13.8	20.2	16
ST. EUSTATIUS	1960	1972	1981	1992
Employed (1)	278	356	465	817
Unemployed (2)	71	80	79	50
Labour force (1 + 2)	349	436	544	867
Total population	1 014	1 381	1 358	1 839
Participation rate	34.4	31.6	40.1	47.1
Unemployment percentage	20.3	18.3	14.5	5.8

LABOUR FORCE (continued)				
ST. MARTIN	1960	1972	1981	1992
Employed (1)	793	3 112	5 998	19 911
Unemployed (2)	50	298	499	2 425
Labour force (1 + 2)	843	3 410	6 497	19 336
Total population	2 728	7 807	13 156	32 221
Participation rate	30.9	43.7	49.4	60.0
Unemployment percentage	5.9	8.7	7.7	12.5
SABA	1960	1972	1981	1992
Employed (1)	247	287	370	524
Unemployed (2)	2	26	29	23
Labour force (1 + 2)	249	313	399	547
Total population	980	968	965	1 130
Participation rate	25.4	32.3	41.3	48.4
Unemployment percentage	0.8	8.3	7.3	4.2

43. Compulsory or forced labour is not authorized or tolerated in the Netherlands Antilles. Both are clearly prohibited under article 4 of the 1950 Treaty of Rome establishing the European Community and ILO Convention Nos. 29 and 105, which are in force in the Netherlands Antilles. Furthermore, on the basis of legislation governing collective labour agreements, trade unions must possess legal status in order to conclude collective labour agreements. The right to collective action by workers and employers is recognized. With respect to this right, the courts may decide on the legality of any such action in the light of the particular circumstances.

9. Economy

44. The Netherlands Antilles main sources of income are tourism, the off-shore financial industry, the port, oil refining and trade.

45. For the Netherlands Antilles as a whole, and the island of Curaçao in particular, 1985 to 1988 was a time of great change in the economy. In the first place, the constitutional change on 1 January 1986, by which Aruba acquired its *status aparte*, had economic as well as political repercussions. Industry underwent structural changes. One major event was the decision to close the refinery in Curaçao. The adverse effects that had been anticipated were limited, however, because after taking over the refinery for the symbolic sum of one guilder, the Government was able to lease it to another foreign State-owned oil company. In the national accounts, the refinery is treated as if located on foreign territory, and so it is primarily reflected in these accounts under the heading of the various domestic dealings with other countries.

46. In the "domestic" industrial sector, shipyards were hit especially badly. After several years of losses they were subjected to a reorganization, the positive effects of which first became visible in 1988. The industrial sector contributes only a small part of the gross domestic product: 5 per cent, almost all from Curaçao. Apart from shipyards, this sector chiefly comprises protected industries.

47. The service sector accounts for the largest share of the Netherlands Antilles income. This applies especially to the Windward Islands, and St. Martin in particular. Here too, developments were not uniformly favourable in this period. The most significant event in the transport sector was the fact that having suffered losses for several years, the national airline was forced to carry out several reorganization plans. The volume of activity at Curaçao's airport none the less expanded, as did that at the port.

48. Tourism flourished over the period 1985-1988, particularly in Bonaire and the Windward Islands. This upward trend was evident from short-term indicators such as the number of nights spent in hotels and the number of cruise tourists. It is noticeable, however, that according to the national accounts the profits from hotels and restaurants on these islands were significantly lower in 1988 than in previous years.

49. Data from the National Accounts (1991) show that the Netherlands Antilles experienced strong economic growth in 1989. If the GNP is viewed in terms of current prices, this would indicate a growth of 10 per cent. In the next two years, 1990 and 1991, this economic growth was sustained, although at a lower level. By achieving a consecutive annual growth of 3.8 per cent and 5.8 per cent in those years, the growth rate returned to approximately its 1988 level. Real average growth since 1986 proved to be 2 per cent.

Some results from the 1991 National Accounts

50. An important macroeconomic variable in the National Accounts is the gross domestic product (GDP). This combines the production figures for the private and public sectors of the Netherlands Antilles. Total GDP increased from 2,552 million guilders in 1991, an average growth rate of 5.9 per cent.

51. If the net primary income from abroad is added to the GDP, the result is the gross national product (GNP): income received by nationals. Given the Netherlands Antilles large inflow of income from abroad (because Curaçao's oil refinery is regarded as being outside the country's territory), the GNP in 1991 (3,526 million guilders) was significantly higher than the GDP.

52. The various contributions made by the individual islands to the Antillean GDP have changed significantly. The share of the Windward Islands decreased from 23 per cent in 1990 to 20 per cent in 1991. This is mainly attributable to the economic recession in St. Martin, caused by adverse developments in the island's tourism sector. The GDP of the Windward Islands in 1991 was 681 million guilders, compared to 743 million in the year before. Because of this decrease, Curaçao's share rose from 72 per cent in 1990 to 75 per cent in 1991. In absolute terms, Curaçao's GDP rose to 2,548 million guilders in 1991. Bonaire's share increased slightly, from 4.5 per cent in 1990 to 5 per cent in 1991. In absolute terms it increased from 144 million guilders in 1990 to 169 million in 1991.

53. The highest per capita GDP in the Windward Islands was 19,930 guilders, while Bonaire, with 15,569 guilders, registered the lowest GDP per capita on the islands of the Netherlands Antilles.

54. GDP per capita in 1991 was 18,676 guilders. A significant growth in GNP per capita set in after 1986. After adjustment for inflation, an annual growth of 1.7 per cent remains. This increase was mainly achieved in 1989, when the growth rate reached 5.9 per cent.

55. For the Netherlands Antilles as a whole, the service sector contributes the largest share of the value added of the private sector: 77 per cent in 1991. This sector includes trade, hotels and restaurants, transport and communication, and financial and other business services. The service sector accounts for an especially high proportion of the private sector on the Windward Islands, namely 85 per cent. This can be explained by the large tourism sector on St. Martin. The remaining share of the value added is contributed by the goods-producing sector, including manufacturing and construction. The breakdown given here again brings out the service-oriented nature of the Antillean economy.

56. The Government's share in the domestic product in 1991, relative to the private sector, was 15.9 per cent for the Antilles. This figure is particularly low in the Windward Islands (10.1 per cent). The Government's share is slowly declining for the Netherlands Antilles as a whole, but increasing in the Windward Islands.

57. The largest private sectors in the Netherlands Antilles are the trade sector and financial and business services, which account for 23 per cent and 21 per cent of the domestic product respectively. The construction and hotel and restaurant sectors are relatively small, at a mere 7 per cent.

58. National expenditure may be divided into consumption and investment. Total consumption in 1991 amounted to 2,872 million guilders, of which private households contributed 71 per cent and the Government the remainder. Gross investment amounted to 861 million guilders. After depreciation has been taken into account, a net investment of 529 million guilders remains. The private sector's share in investments was 86 per cent. Consumption increased in the period 1986-1991 by an annual rate of 4.4 per cent. Net investment increased significantly by 11 per cent a year.

59. Annual imports of goods and services (excluding oil) in these years were constantly higher than exports. This means that the Netherlands Antilles is in a situation of excess expenditure: expenditure is higher than income. This is compensated, however, through the wages and the profit tax received from abroad. The economic situation of the Netherlands Antilles in these years has not, therefore, been deteriorating.

60. The tax burden was relatively high in Curaçao during 1991: if the total amount collected is related to the total population, each inhabitant of Curaçao paid an average of 3,872 guilders tax. In Bonaire this amounted to 2,071, and for the Windward Islands it was 2,679 guilders.

II. GENERAL POLITICAL STRUCTURE

61. This section briefly describes the political history and framework, the type of government and the organization of executive, legislative and judicial bodies.

A. Constitutional structure of the Kingdom of the Netherlands

62. The present constitutional structure of the Kingdom of the Netherlands dates from 1954, when, after several years of study, discussion and negotiation, the Netherlands, Suriname and the Netherlands Antilles (then including Aruba) decided to establish a new constitutional order under which (according to the Charter of the Kingdom, the constitutional document which was promulgated) they would "conduct their internal affairs autonomously and in their common interest on a basis of equality and [...] accord each other reciprocal assistance". Thus the Kingdom, while remaining one sovereign entity under international law, came to consist of three co-equal partners which have distinct identities and are fully autonomous in their internal affairs.

63. Since then, two important changes have taken place. In 1975, Suriname decided - with the full assent of the partners - to leave the Kingdom and become a sovereign State in its own right. In 1986, Aruba became a separate country within the Kingdom, under the Charter of the Kingdom, and therefore now has the same constitutional status as the two other countries, the Netherlands and the Netherlands Antilles.

64. The Charter of the Kingdom, the highest constitutional instrument of the Kingdom, is a legal document *sui generis*, which is based upon its voluntary acceptance by the three countries (the Netherlands, the Netherlands Antilles and Aruba). It comprises three essential parts. The first part defines the association between the three countries, which is federal in nature. The fact that together the three countries form one sovereign entity implies that a number of matters need to be administered by the countries together, through the institutions of the Kingdom (whenever possible, bodies established in the various countries participate in the conduct of these affairs). These "Kingdom affairs" include the maintenance of independence, defence, foreign relations, the safeguarding of fundamental human rights and freedoms, legal stability and proper administration.

65. The second part of the Charter deals with the relationship between the countries as autonomous entities. Their partnership implies that the countries respect each other and render one another aid and assistance, materially and otherwise, and that they consult and coordinate in matters which are not Kingdom affairs but in which a reasonable degree of coordination is in the interest of the Kingdom as a whole.

66. The third part of the Charter defines the autonomy of the countries, which is the principle underlying the Charter; the countries govern themselves according to their wishes, subject only to certain conditions imposed by their being part of the Kingdom. Elementary principles of democratic government, observance of the Charter and Kingdom legislation, and the adequate functioning of the country's bodies are matters of concern to the whole realm. Conversely, although Kingdom affairs are matters for the Kingdom as a whole, the countries play active roles in the way they are conducted.

67. The Netherlands Antilles is an autonomous entity within the Kingdom of the Netherlands, and has its own Constitution, which contains the same basic human rights and freedoms that are provided for by the Constitution of the

Netherlands. The majority of the human rights and freedoms contained in different major human rights instruments are protected by the Constitution, while others are covered by separate laws.

B. Type of government

1. General

68. The Kingdom of the Netherlands is a constitutional monarchy, and its system of government is a parliamentary democracy. The Queen is the head of State, and she is represented in the Netherlands Antilles by the Governor.

69. The Netherlands Antilles has governing bodies at both the central and island levels. The federal government of the Netherlands Antilles consists of the Governor and the Council of Ministers.

70. The Netherlands Antilles at present consists of five islands, each of which is autonomous as regards its own affairs. Each island is administered by a Lieutenant-Governor and an Executive Council.

2. Council of Ministers

71. The Council of Ministers consists of not more than seven ministers, unless otherwise provided for by federal ordinance. The Council of Ministers elects one of its number to chair it. The ministers themselves are appointed by the Governor after consultation with the Legislative Council and after having heard the recommendations of the Government Advisory Council. The ministers' responsibilities are regulated by federal ordinance.

3. Electoral system

72. The Netherlands Antilles has a multiparty system. It has a system of proportional representation in which seats are allocated to parties in proportion to numbers of votes cast. To be elected, one must have a number of votes equal to the total number of votes cast divided by the number of seats to be allocated. Parliament and the Island Councils are in principle elected according to the same electoral system.

73. The right to vote and the right to stand for election are laid down in the Constitution of the Netherlands Antilles.

4. Parliament

74. The parliamentary system is enshrined in the Constitution of the Netherlands Antilles. The parliament's responsibilities are enumerated in a Standing Order. The parliament is the representative body at central level and is elected every four years. Its two main tasks are to cooperate in creating legislation and to scrutinize the functioning of the Government. To enable it to perform these tasks, parliament has been granted various powers. To perform its tasks as co-legislator, it has the right of amendment; this is the right to make changes to bills introduced by the Government. Any member of parliament can propose an amendment.

75. Parliament also has the right to initiate legislation. To exercise its supervisory role in relation to the Government, members of parliament have the right of interpellation, the right to put questions to ministers and the right of inquiry. This latter right entitles members of parliament to request information from one or more ministers.

5. Island Council

76. The Island Council is the principal administrative body for each island. According to the Netherlands Antilles Island Regulation, the Island Council is fully authorized to exercise all the powers of government with regard to the island's own affairs. At island level, the constitutive decision is taken by the Island Council.

C. Legal system

77. Federal legislation is enacted by the competent authorities at the central level of government, and Island legislation by the competent authorities at the Island level of government. All procedures concerning legislation are governed by the Federal Constitution and the Islands Regulation of the Netherlands Antilles respectively.

78. The Charter occupies the highest place in the hierarchy of legislation. Article 2 of the Charter lists agreements with other powers and with international organizations. International treaties enter into force on the basis of, and according to, the Charter's provisions.

79. The procedure for drafting and promulgating treaties is governed by provisions of the Constitution. The relevant articles of the Constitution refer to the Kingdom, making it clear that these provisions apply to the Kingdom as a whole. Moreover, article 5 of the Charter states that the legislative power in Kingdom affairs is provided for in the Constitution, in so far as the Charter does not provide for it. In addition, a Cooperation Agreement exists between the Netherlands Antilles and Aruba (Publication Sheet 1985, 88), article 3 of which states that both countries should incorporate human rights, as defined by the European Convention on Human Rights of 4 November 1950, into their legislation.

D. The judiciary

80. On the basis of the Constitution, the Netherlands Antilles has one joint court of appeal and courts of first instance on each island. Under a cooperative agreement between Aruba and the Netherlands Antilles that came into effect on 1 January 1986, the Court of Appeal operates as a Joint Court of Appeal for the Netherlands Antilles and Aruba. The members of the Court of Appeal act as judges, presiding alone, in first instance courts.

81. The independence of the judiciary is safeguarded in the Constitution; judges are appointed for life by the Queen after consultation with the Governor of the Netherlands Antilles.

82. On 1 March 1965, the Rules on Appeals in Cassation for the Netherlands Antilles came into effect. Article 1 defines the essence of these rules,

which is that an appeal can be lodged with the Supreme Court in The Hague "in similar cases, in a similar fashion and with similar legal consequences" to those that apply to civil and criminal cases in the Netherlands.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

83. The court in the Netherlands Antilles may be an ordinary court or an administrative court specially set up for this purpose.

A. The ordinary court

84. If an individual considers that a government body has made a decision which prejudices his interests under civil law in an unacceptable manner, he may institute proceedings before the ordinary courts to have this decision overturned.

85. The different ways in which an ordinary court may be involved in settling disputes arising from action taken by public authorities are the following:

(a) As a criminal court. The ordinary court takes cognizance of all cases involving prosecutions which may result in the imposition of a sentence. A case instituted by the Public Prosecutions Department is intended to result in the conviction of the accused. The court must form an opinion on the extent to which the norm that has been infringed is binding. If the court concludes that the norm is not binding, as it conflicts with a provision of international law that is binding on all persons, the accused is acquitted. In this way the ordinary courts play an important role in monitoring the lawfulness of legislation;

(b) As an administrative court designated in a special Act of the Netherlands Antilles. The following examples may be cited:

(i) Article 19 of the Netherlands Antilles Islands Regulations provides that the Court of Justice may decide on the admission of a member to the Island Council if the Council has itself failed to do so;

(ii) Article 11 of the Electoral Regulations states that the court of first instance is competent to hear applications for amendments to the electoral register. Based on this authority, the court of first instance may make a compulsory purchase order and determine compensation under section 18 of the Compulsory Purchase Act.

The courts are generally declared competent, in the provisions referred to, to overturn certain decisions by administrative bodies and to substitute their own decision, or to take decisions where a government body has failed or lacked the competence to do so;

(c) As an administrative court under article 103 of the Constitution of the Netherlands Antilles. Under this article, disputes on electoral law and other civil rights are within the jurisdiction of the ordinary courts if no

other court has been designated by an Act of the Netherlands Antilles. As article 103 has been elaborated by an Act of the Netherlands Antilles, doubts have been raised in the case law as to whether it can indeed form the basis for the competence of the ordinary courts. The current case law is that since no other courts have been designated to hear these kinds of cases in the Netherlands Antilles, individuals should apply to the ordinary courts.

B. Administrative courts

86. In addition to the ordinary courts which sometimes act as administrative courts, the Netherlands Antilles also have special administrative courts. These are as follows: the Tax Tribunal, the Appeal Court for Public Service, the Public Service Tribunal, and the four tribunals that hear cases connected with the General Old Age Pension Act, the Accident Insurance Act, the Health Insurance Act and the General Widows' and Orphans' Insurance Act. The function of these administrative courts is to determine the lawfulness of decisions made under the various Acts.

87. Grounds for review by these courts are:

(a) Conflict with the law, including the International Covenant on Civil and Political Rights;

(b) Conflict with the ban on abuse of power;

(c) Conflict with the ban on arbitrariness;

(d) Conflict with other generally recognized principles of proper administration.

88. Certain fundamental rights may only be restricted by legislation passed by the Government (the Governor and the Council of Ministers) and the parliament of the Netherlands Antilles. In other words, the authorities of the five island territories of the Netherlands Antilles are not empowered to impose such restrictions.

89. As an executive power of the Government of the Netherlands Antilles, the Governor may annul any regulation by an island territory administration which restricts the individual in the exercise of his or her fundamental rights. If the Governor does not annul such a regulation, any individual may institute legal proceedings, whereupon the court may declare the regulation inoperative because it conflicts with an overriding provision, such as a human rights convention, the Constitution of the Netherlands Antilles or a law or Governor's Decree.

90. As a representative of the Kingdom of the Netherlands, the Governor may propose that the Queen, as head of State of the Kingdom, suspend or annul any administrative measure enacted by the Government of the Netherlands Antilles which contains provisions violating human rights and freedoms. Furthermore, if, in his opinion, an administrative measure is in violation of an overriding provision and should be suspended or annulled, he will not enact it. Partly as a result of the judgement of the European Court of Human Rights of 23 October 1985 (Benthem Case) whereby appeal to the Crown as just mentioned

could not be regarded as providing an independent and impartial tribunal, appropriate administrative proceedings before a court of first instance have been introduced.

91. The courts of the Netherlands Antilles may scrutinize any government action and even legislation to ensure that it is in accordance with relevant human rights instruments.

92. Recourse to the courts in the Netherlands Antilles in connection with human rights matters is safeguarded by the Constitution and by laws and statutory instruments enacted in pursuance thereof. Thus even if the Governor does not propose that the Queen suspend or annul an administrative measure enacted by the Government of the Netherlands Antilles, the court may declare the measure inoperative at the request of any person whom the measure unlawfully restricts in the exercise of his or her fundamental rights.

93. Under the law of the Netherlands Antilles, the power to institute criminal proceedings lies solely with the Public Prosecutions Department. The individual member of the public is not entitled to institute such proceedings, although he or she may lodge a complaint with the court, accompanied by a request that proceedings be instituted. Criminal procedure in the Netherlands Antilles is governed by what is known as the expediency principle, which means that the Public Prosecutions Department may decide not to prosecute in a particular case for reasons related to the public interest. However, under article 26 of the Code of Criminal Procedure, any interested party may lodge a complaint with the court against such a decision. The court then hears the reason for the decision not to prosecute, and decides, completely independently, whether to instruct the Public Prosecutions Department to prosecute.

94. The law of the Netherlands Antilles provides several means by which victims may obtain compensation. Both the Civil Code (arts. 1382-1397d, for damages caused to others) and the Code of Criminal Procedure (arts. 189-193, for damages caused by the offender) of the Netherlands Antilles contain provisions with regard to compensation and damages that ensure that the victim obtains redress.

95. A victim may join criminal proceedings as an injured party and make an application for damages. On the other hand, victims seeking compensation on account of any tort may have recourse to civil courts. If the tort is alleged to have been committed by the State or by a public official in the exercise of his office, the Government of the Netherlands Antilles or an Island Government, whichever is appropriate, may be compelled to pay damages. There is no right to medical or psychological compensation. The aforementioned stipulations apply regardless of the nationality of the person or persons concerned.

96. There are several restrictions on derogations from obligations. Article 137 of the Constitution of the Netherlands Antilles (Bulletin of Acts and Decrees 1955, No. 36 PB 32) provides that in order to maintain external or internal security in circumstances in which, in event of war or the threat of war or in the event of disruption or a likely disruption of internal order and peace, the interests of the Kingdom might be prejudiced, each part of the

Netherlands Antilles may be declared to be in a state of war or under martial law. The manner in which such a declaration must be made and the consequences thereof are determined by an Act of the Kingdom or a regulation drawn up pursuant to such an Act.

97. Paragraph 3 of the aforementioned article states that regulations may be drawn up providing for the powers of the civil authorities in respect of public order and the police to be transferred partly either to other organs of the civil authorities or to the military authorities, and stating how this is to be done. It also stipulates that if the powers are transferred to the military authorities, the civil authorities become subordinate to them in this respect. The same regulation also provides for exemptions to the freedom of the press under article 8 of the Constitution, and to the inviolability of the home (art. 107 of the Constitution) and of correspondence (art. 108 of the Constitution).

98. Article 138 of the Constitution also provides that the Governor of the Netherlands Antilles, who is the representative of the Kingdom, may, without prejudice to the provisions of article 137 of the Constitution, declare each part of the Netherlands Antilles to be in a state of war or under martial law in order to maintain internal security and public order. The way in which such a declaration is to be made, and its consequences, are to be determined by Act of Parliament. Here too, it is possible to derogate from provisions concerning the freedom of the press, the right of assembly, the inviolability of the home and of correspondence.

99. In the event of war, it is also possible to derogate from article 105 of the Constitution. Paragraph 1 of this article provides that: "No one may be deprived of his legal rights against his will". Paragraph 2 reads: "The way in which disputes about the division of powers between the judiciary and other authorities are to be decided shall be regulated by Act of Parliament."

100. Article 34 of the Charter of the Kingdom of the Netherlands (Act of 28 October 1954, S. 503) also refers to the fact that in event of an emergency certain statutory measures should be taken, which may even entail infringements of certain fundamental rights. This article is worded in the same way as article 137 of the Constitution of the Netherlands Antilles.

101. It should be noted that as far as is known, the provisions contained in the Constitution of the Netherlands Antilles and the Charter of the Kingdom of the Netherlands were not invoked either before or after any of the six major United Nations human rights instruments came into force for the Netherlands Antilles.

102. In the Netherlands Antilles most of the provisions regarding material rights set out in several human rights instruments are, in accordance with article 2, paragraph 2, of the Constitution of the Netherlands Antilles, directly applicable in view of their content and wording, and can be applied by the courts in the Netherlands Antilles without the need for separate legislation. Articles 93 and 94 of the Netherlands Constitution, which allow appropriate treaty provisions to have direct legal consequences for the individuals, and even allow them to prevail over conflicting legislation, also

apply to the Netherlands Antilles on the basis of articles 5 and 24 of the Charter of the Kingdom of the Netherlands. Article 93 of the Charter reads: "Provisions of treaties and the resolutions by international institutions which may be binding on all persons by virtue of their content shall become binding after they have been published". Article 94 of the Charter reads: "The valid legal stipulations within the Kingdom are not applicable if these are not compatible with any and all the binding stipulations of conventions and decrees of international organizations".

103. The question of whether a treaty is self-executing is ultimately a matter to be decided by the courts. On the other hand, treaty provisions which stipulate that certain acts must be regarded as criminal offences and require that offenders be prosecuted under the national criminal law are not directly applicable. In the first place, article 1 of the Criminal Code of the Netherlands Antilles states that an act can only be deemed to be an offence on the basis of a previously established statutory provision in the criminal law. This means that definitions of offences contained in international agreements have to be incorporated into the criminal law of the Netherlands Antilles. In the second place, incorporation into the criminal law of the Netherlands Antilles also serves to determine the maximum penalty which may be imposed for the offence.

104. Besides the previous observations in this connection, the following institutions and mechanisms have been established, or are in preparation, to monitor the implementation of human rights:

(a) The National Decree governing the Police Conduct Complaints Committee (Publication Sheet 1994, No. 5) authorizes the conducting of independent investigations. This Committee consists of a medical practitioner, a lecturer in law at the University of the Netherlands Antilles, and a former public prosecutor;

(b) A legal measure intended to prevent inhuman treatment or punishment has been included in the Administrative Procedure Bill. It creates scope for bringing in an independent judge in cases of errors committed at the administrative level, including those made by public servants;

(c) A bill is in preparation that will set up a national criminal investigation department under the direct jurisdiction of the Attorney-General, a department that will operate as an independent investigating body in criminal cases against civil servants and authorities, including the police;

(d) Another bill which is in preparation will lead to the appointment of an independent Ombudsman to whom complaints could also be submitted in cases of investigations involving the Justice Department and the judiciary.

IV. INFORMATION AND PUBLICITY

105. In the first place, it should be mentioned that the texts of all human rights instruments are available in the language of instruction used in the Netherlands Antilles. These instruments are regularly distributed to the public and relevant authorities through the Treaties Division of the Bureau

for Foreign Relations of the Netherlands Antilles. Numerous copies of the Manual on Human Rights Reporting as well as the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials have also been distributed.

106. Local working groups have been established to monitor and assist in preparing the periodic reports, through which mechanism the various governmental institutions are being reached.

107. The local media also spread an awareness of human rights issues among the public, and the active role adopted by non-governmental organizations helps to foster public debate on diverse topics.

108. Central Government has sponsored and participated in several workshops dealing with human rights themes organized by non-governmental organizations.

109. In addition to cooperation at local level, cooperation in the field of awareness programmes has also been initiated within the Kingdom of the Netherlands, in the form of workshops on human rights issues.

110. In connection with the preparation for the 1994 International Conference on Population and Development, an urgent need was felt for an institutionalized organization to deal with population issues in a broad sense. In June 1993, the Government of the Netherlands Antilles decided to establish the Permanent Committee for Population Policies and a Population Unit. The Committee consists of persons from governmental and non-governmental organizations, the private sector, labour unions and representatives of all island territories.

111. In raising awareness of this Conference and the relevant themes, the Committee was involved in a number of activities, such as organizing a poster contest, making a local film on population issues/the situation in the Netherlands Antilles, radio programmes, the issuing of press releases and giving interviews. The necessary funds were made available by the United Nations Population Fund.

112. The Foreign Relations Bureau of the Netherlands Antilles is responsible for coordinating the periodic reports. Inputs are normally requested from a large number of sources, for example from all governmental departments at central and Island level, but also from relevant non-governmental organizations. Occasionally, the content of the reports becomes the subject of public debate.